IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of case

Date of decision: 20th March, 2006

First Appeal No. 1044 of 2001
(Old No. 165 of 1995)

State of U.P.
Through Collector, Nainital ….Appellant

Vs.

Shri Kunwr Lal
S/o Shri Shyam Sunder Lal
R/o Village Bhona Islamnagar
Tehsil Bajpur, District- Nainital….Respondent

Learned Standing Counsel for the appellant
Shri M.C. Pande, learned counsel f or the respondent.

ALONGWITH

First Appeal No. 1045 of 2001
Old No. 166 of 1995)

State of U.P.
Through Collector, Nainital …..Appellant

Vs.

Shri Amrit Lal
S/o Shri Shyam Sunder Lal
R/o Village Bhona Islamnagar
Tehsil- Bajpur, District- Nainital …Respondent

Learend Standing Counsel for the appellant
Shri M.C. Pande, learned counsel for the respondent.

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Hon. Mr. Justice Prafulla C. Pant)

Dated: 20.03.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

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Hon’ble Prafulla C. Pant, J.

These two appeals, preferred under Section 54 of Land Acquisition Act, 1894, are directed against the common judgment dated 01.06.1979 passed by learned District Judge, Nainital in land Acquisition Reference Case No. 47 of 1978 and land Acquisition Reference Case No. 49 of 1978 whereby compensation awarded

By Special Land Acquisition Officer has been enhanced by the said court.

2. Brief facts of the case are that land measuring area- 13.210 acres of village – Bhona, Islamnagar, Tehsil and pargana- Bazpur, District- Nainital, was acquired for construction of Bhona-Birha Road. The notification under Section 4(1) of land Acquisition Act, 1894 was issued on 26.09.1945, followed by notification dated 28.09.1975, issued under Section 6(1) of said Act. The Special Land Acquisition Officer made an award dated 31.03.1977, providing compensation to the claimants at the rate of Rs. 1562 per begha in respect of the land within abadi limits and Rs. 780 per bigha in respect of the land beyond abadi limits. Dissatisfied by the same, the claimants got a reference made to the court of District Judge, claiming that the land acquired is of value not less than Rs. 25,000/- per acre. Learned Reference Court registered the Reference Case No. 47 of 1978 (out of which First Appeal No. 1044 of 2001 has arisen), Land Reference Case No. 49 of 1978 (out of which First appeal No. 1045 of 2001 has arisen) alongwith other land Acquisition Reference Case Nos. 48 of 1978, 50 of 1978, 51 of 1978, 52 of 1978 and 53 of 1978 in respect of the other claimants. All these references were consolidated together by the reference court as these pertain to the land of the same village, acquired through the same notification. Learned Reference Court on the basis of claims and the objections, framed the following issues:-

1. *whether the compensation awarded to the claimant is unfair and inadequate?*
2. *To what amount of compensation is the petitioner entitled?*

3. After recording the evidence and hearing the parties, the Reference Court partly allowed the claims of the claimant-Shri amrit Lal and that of Shri Kunwar Lal. Claims in respect of the other claimants- namely Madan Gopal, Brij Bhusan, Surendra Lal and Kesra Devi, were similarly partly allowed but it is not clear if the appeals were preferred by the State in respect of said claimants.

4. I hard learned counsel for the parties and perused the lower court record.

5. First contention of the learned Standing Counsel on behalf of the appellant is that the Special Land Acquisition Officer has rightly drawn the distinction between the abadi land and non-abadi land and learned Reference Court has erred in law in awarding compensation at the same rate for non-abadi land at which compensation was awarded for the abadi land. No doubt, generally market value of the abadi land is more than that of the non-abadi land. It is also true that a non-abadi land cannot be said to be abadi land unless it is declared so under Section 143 of U.P. Zamindari Abolition and Land Reforms Act, 1950. However, on Perusal of the record it does not appear that the Reference Court has awarded enhanced compensation solely for the reason that the non-abadi land is of equal

Value to that of abadi land. It has considered the exemplar sale deeds, filed by the parties, before coming to the conclusion as to the market rate of the land acquired.

6. Claimants before the Reference Court have alleged that the land acquired is of the value of Rs. 25,000/- per acre. The Special Land Acquisition Officer has awarded compensation of the land acquired at the rate of RS. 10,000/- per acre in respect of the abadi land and Rs. 790 per bigha in respect of the non-abadi land. The objectors relied on the sale deeds dated 23.03.1976 (Exh- 1) executed by one Shri Suraj Prakash inr espect of plot No. 100, and sale deed dated 27.05.1975 (Exh-11) executed by one Shri Dhani Ram, Shri Dallu and Shri Geda in respect of plot No. 391. On the other hand, the State has relied on exemplar sale deeds (Exh. A-1 to Exh. A-6). But from the record it appears that the sale deeds relied on behalf of the State, are in respect of the land of low-lying area, which used to get sub-merged during rainy season, due to water logging.

7. In the opinion of this Court, the reason for discarding the exemplars, relied by the State cannot be said to be unreasonable or unjust. The land acquired in the present case including non-abadi area was a continuous strip of land, which was near main Bazpur-Kashipur Road. This Court agrees with the Reference Court on the fact that from evidence on record the entire land appears to be a strip of land of the same nature and this fact dilutes the distinction of abadi and

non-abadi land, particularly when the claimants have been able to show the exemplar sale deeds, which indicate that even non-abadi land have been sold by the vendees at a higher rate than the market rate of Rs. 10,000/- awarded by the Special Land Acquisition Officer in respect of the abadi land.

8. It is also pertinent to mention here, since it has come on record that the circle rate fixed by the Collector for the purposes of the stamp duty of the land in non-abadi area is at Rs. 10,000/- per acres, as such there is no justification to award compensation at the rate less than the market rate fixed for stamp duty. It is settled principle of law that the market value fixed for the purposes of the stamp duty cannot be said to be market value for the purposes of awarding the compensation but at the same time it is unjust to award compensation at the rate less than the market rate fixed for stamp duty. The circle rate fixed under the rules by the Collector himself for the purposes of the stamp duty cannot be ignored altogether and compensation cannot be awarded at a rate less than fixed for the stamp duty unless for a strong reason shown by the State to award the compensation at such lower rates. ***(Bhupenra Singh and others Vs. Awas Vikas Parishad and others 2005 (2) U.D. 295*** *is relied).*

9. In view of the above discussion, this Court does not find any error either of fact of that of law in awarding the compensation to the claimants at the rate of Rs. 10,000/- per acre with interest @ 6% per year as directed in the impugned award. Accordingly, both the

Appeals are liable to be dismissed. First Appeal No. 1044 of 2001 and Fist Appeal No. 1045 of 2001, are dismissed. No order as to costs.

(Prafulla C. Pant, J.)

Dt: 20th March, 2006

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